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8 **IN THE UNITED STATES DISTRICT COURT**
9 **FOR THE EASTERN DISTRICT OF CALIFORNIA**
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11 UNITED STATES OF AMERICA,

CASE NO. CR F 03-5410 LJO

12 Plaintiff,

**ORDERS ON DEFENDANT'S MOTION TO
DEPOSE DEAN MILLER (F.R.Crim.P. 15.)**

13 vs.

14 VICTOR VEVEA,

15 Defendant.
16 _____/

17 Defendant Victor Vevea ("defendant") requests that is Court order the deposition of Dean Miller
18 ("Mr. Miller") pursuant of F.R.Crim.P. 15(a).

19 F.R.Crim.P. 15(a) allows a party to seek the deposition of a prospective witness to preserve that
20 testimony. "Exceptional circumstances" and facts "in the interests of justice" must exist for such a
21 deposition.

22 The circumstances presented to the Court are found at page 4, lines 5-8 of defendant's
23 declaration, to wit:

- 24 1. Mr. Miller is currently hospitalized (statement made on information and belief);
25 2. Mr. Miller is in the intensive care unit (statement made on information and belief);
26 3. Mr. Miller's diagnosis is unknown;
27 4. Mr. Miller's prognosis is unknown;
28 5. That the defendant is "informed and believes" that Mr. Miller's condition is "serious and

deteriorating.” (There is no indication of defendant’s source of information or belief).

Without more, this Court is unable to issue the requested order in that no determination can be made:

1. Whether the source of defendant’s information is reliable;
2. Whether Mr. Miller’s condition is so serious that he will be unable to testify at trial in five weeks; and
3. Whether Mr. Miller’s current condition would allow him to participate in a deposition without jeopardizing his medical condition, assuming his medical condition is as represented.

Without more this Court is unable to determine whether exceptional circumstances exist. This Court DENIES defendant’s request to depose Mr. Miller.

IT IS SO ORDERED.

Dated: December 10, 2007

/s/ Lawrence J. O'Neill
UNITED STATES DISTRICT JUDGE